

REMARKS

Reconsideration and allowance of this application are respectfully requested in view of the above amendments and the following remarks.

By this Amendment, the specification has been replaced with a substitute specification; two drawings are added (for reasons explained below); the abstract of the disclosure has been replaced; claims 1, 2, 4, 10, 11, 13, 18, 20, and 21 have been amended, and new claims 22 – 36 have been added. Upon entry of this Amendment, claims 1-4, 9-14 and 18-36 will be pending in this application.

As a preliminary matter, this application is a **continuation** of the parent case 09/906,288, but **not** a divisional thereof. Applicant's designation of this application as a divisional was an inadvertent error.

In response to the Examiner's request, applicant has submitted a new abstract herewith. Approval of this Abstract is respectfully requested.

SPECIFICATION AND DRAWINGS

Applicant also submits herewith a substitute specification per 37 CFR 1.125. This substitute specification includes no new matter. A marked up version of the substitute specification is included.

The specification has been amended to deal with issues raised by the Examiner as well as to correct minor typographical errors found by applicant. In addition, the Examiner requested that the embedded hyperlinks (in original paragraphs ¶0007 and ¶0073) be deleted. Those paragraphs (now ¶0008 and ¶0077, respectively) have been amended as follows:

<i>Paragraph 0007 as filed</i>	<i>is now Paragraph 0008</i>
DNS Lookup (Seconds): The time it takes for the browser to turn the text based hostname (e.g., www.yahoo.com) into an IP address (207.221.189.100).	DNS (Domain Name System) Lookup (Seconds): The time it takes for the browser to turn the text based hostname (e.g., as shown in FIG. 6) into an IP address (207.221.189.100).

Application No. 10/743,732
of Stephen CARLEY

AMENDMENTS TO THE DRAWINGS

Please add the attached two new drawings (Figures 3A and 6).

<i>Paragraph 0073 as filed</i>	<i>is now Paragraph 0077</i>
FIG. 3 is * * * Specifically, in FIG. 3, the displayed statistics relate to a web site having the URL: "http://rocky.adquest3d.com:81/supermain.cfm?brd=9000".	FIG. 3 is * * * Specifically, in FIG. 3, the displayed statistics relate to a web site having the URL shown in FIG. 3A.

Approval and entry of the substitute specification is respectfully requested.

In order to deal with the required amendments to the specification, two new drawings have been added. Specifically, new Figure 6 contains the hostname previously listed in paragraph ¶0007 and new Figure 3A contains the URL previously listed in paragraph ¶0073. No new matter is added by these two drawings and their entry is respectfully requested.

THE CLAIMS

The Claims have been amended to deal with the issues raised by the Examiner and to clarify certain aspects of the invention.

Claim 1 has been amended to recite that “the processing module is further programmed to alert a user about a potential network performance problem based, at least in part, on whether the predetermined relationship exists between the first and second variance statistics.” Claim 10 has been amended to recite “alerting a user about potential network performance problems based, at least in part, on whether the predetermined relationship exists between the first and second variance statistics.” Support for these claim amendments is found in the application as filed, e.g., at ¶0081 (now ¶0085). [Note that these and other references to the specification as provided only are examples, and are not in any way meant to be limiting.]

Claim 20 has been amended to recite “determining whether a potential problem exists with the network’s performance based, at least in part, on a comparison of the first and second variance statistics; and generating an alarm

when it is determined that a problem exists with the network's performance."

Claim 21 has been amended to recite that "the processor is further programmed to determine whether a potential problem exists with the network's performance based, at least in part, on a comparison of the first and second variance statistics; and to generate an alarm when it is determined that a problem exists with the network's performance." Support for these claim amendments is found in the application as filed, e.g., at ¶0055 (now ¶0057).

Support for new claims 22 and 24 is found, e.g., at original ¶0053 (substitute ¶0055).

Support for new claims 23 and 25 is found, e.g., at original ¶0064 (substitute ¶0068).

Support for new claim 26 is found, e.g., at original ¶0081 (substitute ¶0085).

Support for new claim 27 is found, e.g., at original ¶¶0032, 0040 (substitute ¶¶0033 and 0043)

New claims 28-34 correspond to original claims 5-8 and 15-17, respectively.

Support for new claim 35 is found, e.g., at original ¶¶0005-0026, and 0041 (substitute ¶¶0006-0027 and 0044).

Support for new claim 36 is found, e.g., at original ¶0045 (substitute ¶0048).

PRIOR ART REJECTION

The Examiner rejected claims 1-4, 9-14 and 18-21 under 35 USC §102 as being anticipated by "Variance of Aggregated Web Traffic" (Morris). The grounds for this rejection are respectfully traversed in view of the above amendments and the following remarks.

Morris is an academic paper discussing statistical models of web traffic and their relationship to real traffic. *See, e.g., Abstract.* Morris, however, lacks any

teaching whatsoever of the claimed alert mechanism. Morris does not provide any real-world application of his results, he merely “present[s] evidence that bandwidth variance changes linearly with the mean.” Pg. 365, § VII. In fact, Morris does not teach a dynamic (ongoing) monitoring of a network. Instead, Morris monitored network traffic in order to evaluate a theoretical model.

Claims 1, 10, 20, 21, 26 and 27 are independent. Each of the claims includes at least one feature that is not taught or in any way suggested by Morris (or any of the other prior art of record).

As noted above, claim 1 has been amended to recite that “the processing module is further programmed to alert a user about a potential network performance problem based, at least in part, on whether the predetermined relationship exists between the first and second variance statistics.” There is nothing in Morris to teach or in any way suggest such an alerting feature.

Similarly, claim 10 has been amended to recite “alerting a user about potential network performance problems based, at least in part, on whether the predetermined relationship exists between the first and second variance statistics.” Again, there is nothing in Morris to teach or in any way suggest such an alerting feature.

Claim 20 has been amended to recite: “determining whether a potential problem exists with the network’s performance based, at least in part, on a comparison of the first and second variance statistics; and generating an alarm when it is determined that a problem exists with the network’s performance.” Morris is silent as to any “determining whether any problem exists with a networks performance.” As noted above, Morris is an academic paper in which he describes using real data to confirm a theoretical model. Thus, Morris does not teach or in any way suggest at least this aspect of claim 20.

Similarly, claim 21 has been amended to recite that “the processor is further programmed to determine whether a potential problem exists with the network’s

performance based, at least in part, on a comparison of the first and second variance statistics; and to generate an alarm when it is determined that a problem exists with the network's performance." For reasons similar to those for claim 20, Morris lacks any teaching or suggestion of at least this element of claim 21.

New independent claim 26 recites a method that includes "alerting a user about network performance that is outside acceptable tolerance or control limits." Morris has no such teaching or suggestion.

New independent claim 27 recites a method that includes "automatically calculating variance statistics * * *; and using a history of performance data statistics to alert a user about performance of network services that are outside acceptable tolerance or control limits." Again, Morris lacks any teaching or suggestion of the claimed alerting.

The other claims all depend (directly or otherwise) from these claims.

Thus, as shown, there is at least one element of each claim that is not taught or in any way suggested by Morris. Accordingly, withdrawal of this rejection under § 102 is respectfully requested.

CONCLUSION

In view of the foregoing amendments and remarks, allowance of this case is earnestly solicited.

The Examiner is invited to telephone the undersigned should he believe that a telephone conference would resolve any outstanding issues in this application.

CHARGE STATEMENT: The Commissioner is hereby authorized to charge any fee specifically authorized hereafter, or any missing or insufficient fee(s) filed, or asserted to be filed, or which should have been filed herewith or concerning any paper filed hereafter, and which may be required under Rules 16-18 (missing or insufficiencies only) now or hereafter relative to this application and the resulting Official document under Rule 20, or credit any overpayment, to our Account/Order Nos. shown in the heading hereof for which purpose a duplicate copy of this sheet is attached.

CUSTOMER NUMBER



* 0 0 0 4 2 6 2 4 *

Respectfully submitted,

By: _____

Brian Siritzky

Registration No.: 37,497

Davidson Berquist Jackson & Gowdey LLP
4501 N. Fairfax Drive; Suite 920
Arlington, VA 22203
Main: (703) 248-0333
FAX: (703) 248-9558